

THE SECRETARY OF COMMERCE
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MEMORANDUM FOR The Export Administration Review Board

Secretary of State
Secretary of Defense
Chairman, East-West
Foreign Trade BoardAdministrator, Energy Research
and Development Administration
Director of Central IntelligenceFrom *Franklin D. Kopp*
Secretary of Commerce

Subject: Export Licensing Policy for Exhibition

My attention has been called to a recommendation to change our policy governing exhibition licenses. Present policy predicates approval or denial of an export license for exhibition in a communist country on a judgment as to the likelihood of the item being licensed for sale to that country.

The policy was discussed at the Sub-ACEP meeting on May 4, 1977. Attached is a copy of the working paper on this issue prepared for discussion at that meeting. It contains the arguments for and against a change in the policy as well as the views of the Subcommittee on Export Administration of the President's Export Council. There was disagreement among the agencies as to the appropriate course of action.

From my review of the issue, I am inclined to believe that a change in our policy is warranted and that our new policy should be to license an item for exhibition without regard to whether we would be prepared to license the same item for sale. (This is the same policy followed by the French, British, Italians, and Japanese.) I recognize the concern expressed by some of those attending the Sub-ACEP meeting that there may be a few items that are so extremely sensitive that we ought not allow them to be exhibited in a communist country (even though we permit them to be exhibited in the U.S. and elsewhere in the West where communist country experts can examine them).

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We are open to your suggestions as to how we might identify such items with sufficient precision as to be able to treat them in a class apart from the operation of the policy I am proposing. However, I am convinced that the government, as a matter of policy, must move away from the case-by-case approach to licensing items for exhibition. The procedures necessitated by the current policy consume too much of our limited resources in view of the marginal contribution they make to the protection of our national security.

At your earliest convenience, please advise me as to your views regarding this change.

Attachment

POLICY RESPECTING LICENSING FOR DEMONSTRATION

ISSUE:

Should the present policy of denying a demonstration license for an item unlikely to be licensed for sale to the country of intended demonstration be replaced by a policy of approving licenses for demonstration with a clear indication to recipients that licenses for sale will be issued only after a separate and full consideration of the merits of the transaction?

BACKGROUND:

The present policy, as set forth in the Special Report to the President and Congress on Export Control, May 29, 1973, is as follows:

"The U.S. has long followed the practice of not approving a license for temporary export of a COCOM-list commodity to a Communist country, for display and demonstration at a trade fair or exhibition in such country, when it would not (or there was substantial likelihood that it would not) for national security reasons, approve a license for subsequent sale and permanent export of the same commodity to the Communist country in which it was to be displayed and demonstrated."

Since 1973 this policy has come under increasing attack by American companies. These companies claim to be disadvantaged as against companies from other COCOM countries that apply less stringent licensing policies respecting demonstration. Although five principal trading countries maintain policies comparable to that of the U.S., the other four principal countries -- France, Italy, Japan, and the U.K.--all license items for demonstration regardless of whether an eventual sale would be approved. Licensing for demonstration does not require COCOM clearance. Consequently, companies from these four countries, all major commercial powers, are

reportedly able to attract buyers to their exhibits at Communist country trade fairs by displaying equipment more advanced technologically than that at the competing American exhibits.

There is no hard evidence as to how much, if any, business is actually lost by American companies as a result of the strict U.S. licensing policy for demonstration. The Bureau of East-West Trade does, however, frequently receive complaints from American companies regarding the U.S. policy, and, in October 1976, the Subcommittee on Export Administration of the President's Export Council recommended that the policy be changed.

The last definitive study of the policy occurred in 1973-74 during a review, mandated by Congress in 1972, of "burdensome procedures". The outcome of the review was a reaffirmation of the present policy. More recently the policy has been discussed at meetings of the Sub-ACEP in 1975 and 1976, without any consensus having been reached on the need for a change.

ARGUMENTS SUPPORTING PRESENT POLICY:

The reasons for denying demonstration of an item that probably would not be licensed for sale follow:

- (1) The communists could obtain technology by merely observing the item visually, or possibly even by disassembling and then reassembling it overnight when it is left unguarded at the demonstration site. Instances of this are recorded.
- (2) The communists could steal the item. Or the company might lose the item through unavoidable circumstances or carelessness. This has happened.
- (3) Denying a license for sale of an item, after the communist buyer's interest has been deliberately stimulated through a demonstration, can irritate the hopeful purchaser and be disadvantageous to the U.S. supplier and to the U.S. Government. Irritation in such situations has in fact been expressed by communist governments in the past at high levels.
- (4) Approving a license for demonstration of an item is inevitably followed by company pressure on the U.S. government to license the sale, because the item is actually in the buyer's country, and transporting it back to the U.S. or storing it elsewhere in the West while a licensing decision is being made can be expensive. This pressure can lead to

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unwise decisions with attendant security risks or processing preferences given to the demonstrating firm to the consequent disadvantage of other U.S. applicants. The administrative disruptions can be costly.

(5) Compelling evidence that the current policy is pursued at a significant cost in terms of lost business opportunities for U.S. companies has not been made available. In fact, a number of U.S. companies independently pursue a policy of not demonstrating items when there is a question of obtaining a license for sale.

(6) Other important COCOM countries, e.g., West Germany, follow the same policy as the U.S. A change in U.S. policy would probably lead these other countries to modify their policies.

ARGUMENTS FOR CHANGE:

Any policy of licensing for demonstration would require certain explicit cautions to the exporter. These would include a clear statement that the license was for demonstration only and not for sale, that the processing of any subsequent application for sale might necessitate extended analysis and, even then, result in a denial, and that the demonstrated item would have to be returned to the West within 30 days following completion of the demonstration, even if an application for a license for sale was pending.

The arguments advanced in favor of such a policy of licensing an item for demonstration even though it might not be licensed for sale are the following:

(1) The present policy leaves American companies at a disadvantage compared with competitors from four commercially important COCOM countries.

(2) Theft or loss of an item is a sufficiently rare occurrence as to make this risk negligible, since such an event could lead to a future denial of all licenses for the country and/or company involved. Any item that might be so strategically valuable as to make theft a realistic option for the communist country regardless of the threat of future sanctions would likely continue to be denied for demonstration even after any change in policy.

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(3) As for status quo arguments (3) and (4), the U.S. Government will be able to resist such pressures effectively and with a minimal residue of ill will. At any rate, any drawbacks inherent in incurring and then resisting such pressures are less serious than the competitive disadvantage presently being suffered by American companies.

In the discussion at the President's Export Council Subcommittee meeting the following relevant points were made in support of the proposal to allow demonstration of goods that are not likely to be licensed for sale:

1. Exporters are not reckless or foolish and they would not allow goods to be lost or stolen since the consequence could be that they would lose their right to export.
2. It is not a high risk to display and demonstrate the latest technology because very little can be gained. Besides, the Communists can freely examine and observe these goods at Western trade shows and fairs.
3. U.S. exporters may well exhibit top-of-the line products, but this is only to keep up with competition. Four or five COCOM member countries are consistently pushing to increase level of high technology products which can be sold under the COCOM system.
4. There may well be commercial pressures to allow sales of demonstrated items, but the USG is able to take a firm stand on not allowing sales of strategic goods, as long as it has been made clear to the exporter that an approval for demonstration is without regard to the chances of approval for sale.
5. There are excessive and unnecessary costs in terms both of time and effort to the exporter and the USG to require full review of requests for demonstration licenses. Demonstration applications and sales applications should be considered separately. U.S. exporters are willing to take the risk that they may not be allowed to sell goods that are demonstrated as long as they are made fully aware of this when a demonstration license is issued.
6. Communist country purchasers ask U.S. exporters why they display second rate equipment when other Western nations (e.g., France and Japan) bring their latest technology.

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